

February 13, 2012

**VIA ELECTRONIC FILING**

Diane P. Wood, Circuit Judge  
J.P. Stadtmueller, District Judge  
Robert M. Dow, Jr., District Judge  
United States District Court for the  
Eastern District of Wisconsin  
517 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

*Baldus, et al. v. Brennan, et al.*, Case No. 11-CV-00562-JPS-DPW-RMD

Your Honors:

Late Friday evening, the defendants filed a “Motion for Summary Judgment on Counts 2-6 and 8 As Alleged by the *Baldus* Plaintiffs, Counts 4 and 5 As Alleged by the *Baldwin* Intervenor-Plaintiffs and the Single Count As Alleged by the Consolidated *Voces De La Frontera* Plaintiffs,” a supporting brief, a supporting affidavit of counsel, and accompanying exhibits. We look forward to discussing the procedural status of this untimely pleading at the final conference with the Court this Thursday. In the meantime, however, we note that:

- none of the Court’s scheduling orders provided for summary judgment motions, let alone a filing six business days before trial;
- at no time have the defendants ever suggested, in any way, that they would ask the Court to address summary judgment motions;
- the local rules provide for a response period for summary judgment motions that would not require plaintiffs to respond to the summary judgment motion until well past the trial dates;
- the summary judgment motion seeks relief against less than all claims alleged, and even if the Court were to grant the motion – without any due process for the plaintiffs – there still would be a trial on the merits on the claims not implicated by the defendants’ motion;
- the summary judgment motion seeks dismissal of the plaintiffs’ Voting Rights Act § 2 claims, including claims relating to Assembly Districts 8 and 9 in Milwaukee, which are

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the focus today of an unresolved discovery dispute between the *Baldus* and *Voces* plaintiffs and the legislature over documents that the legislature continues to withhold on attorney-client privilege grounds (*see* Fed. R. Civ. P. 56(d));

- the subjects addressed in the motion repeat some of the defendants' arguments raised in the intervenor-defendants' pending motion and presage other arguments raised in all of the defendants' interim trial briefs, suggesting that they are looking for a way to avoid the page limits on previously filed briefs as well as trial briefs due two days from today; and
- the defendants have waived, by their failure to raise any of the "summary judgment" legal issues in the nearly eight months of this litigation, their procedural ability to raise them now.

The plaintiffs do not intend to respond to the summary judgment motion before discussing its status with the Court on Thursday. Thank you for your consideration.

Very truly yours,

GODFREY & KAHN, S.C.

A handwritten signature in blue ink, appearing to read "Douglas M. Poland", is written over the typed name.

Douglas M. Poland

cc: Maria Lazar (by hand delivery)  
Patrick Hodan (by hand delivery)  
Daniel Kelly (by hand delivery)  
Peter Earle (by facsimile)  
P. Scott Hassett (by hand delivery)  
Thomas L. Shriner, Jr. (by facsimile)

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